JOBNAME: No Job Name PAGE: 1 SESS: 1 OUTPUT: Tue Oct 4 13:00:41 2011
//caseml/case/mlj/02_-_PPB_Group_Bhd_185589_126936_01

PPB Group Bhd v Pemungut Duti Setem

HIGH COURT (KUALA LUMPUR) — JUDICIAL REVIEW NO R1–25–235 OF 2010
ROHANA YUSUF J
12 APRIL 2010

Revenue Law — Stamp duty — Assessment of ad valorem duty — Objection against assessment — Rejection — Appeal to High Court — Whether collector of stamp duties applied correct provisions of law in imposing stamp duty — Whether memorandum of transfer was voluntary disposition inter vivos within scope of s 16 of the Stamp Act 1949 — Whether collector had duty to divulge provision it had relied on in coming to its decision to appellant — Stamp Act 1949 ss 4, 16 & First Schedule, item 132(a)

Malayan Sugar Manufacturing Co Bhd ('Malayan Sugar') passed a directors' resolution to pay PPB Group Bhd ('the appellant'), its shareholder, a dividend in specie by transferring to the appellant twelve pieces of freehold land ('the transfers'). The memorandum of transfer ('the memorandum') that evidenced the transfers was submitted to the collector of stamp duties ('the collector'). The respondent treated each transfer as a voluntary disposition inter vivos and charged ad valorem duty of RM1,277,890 pursuant to item 32(a) of the First Schedule of the Stamp Act 1949 ('the Act'). The appellant lodged an objection to the stamp duty charged but the collector rejected it and hence this appeal. It was the appellant's case that the stamp duty charged on the memorandum should be a nominal sum of RM10 only because the transfers in question were not for money consideration and did not fall within the word 'instrument' under item 32(a) of the First Schedule of the Act. The respondent contended that although the transfers were without monetary consideration, they attracted ad valorem stamping under item 32(a) because the transfers were voluntary dispositions inter vivos under s 16 of the Act. The appellant also submitted that in all the correspondences between the appellant and the respondent on this issue prior to the filing of the present appeal, the respondent had never informed it that reliance was placed on s 16 of the Act. In countering this argument the respondent submitted that it had no duty to divulge the provision that it had relied on in coming to its decision to the appellant. The main issue for determination in this appeal was whether the collector had applied the correct provisions of law in imposing the ad valorem stamp duty.

Held, dismissing the appeal:

(1) Section 16(1) of the Act, which is historically modeled on the English Finance Act 1910, allows the collector to charge stamp duty on any

JOBNAME: No Job Name PAGE: 2 SESS: 1 OUTPUT: Tue Oct 4 13:00:41 2011
//caseml/case/mlj/02_-_PPB_Group_Bhd_185589_126936_01

conveyance or transfer which operates as a voluntary disposition inter vivos with the like stamp duty as if it were a conveyance or transfer on sale. In the present case since the memorandum of transfer by Malayan Sugar to the appellant was a voluntary disposition inter vivos within the scope of s 16 of the Act, the duty chargeable is like what is charged on a sale and thereby item 32(a) of the First Schedule to the Act becomes applicable. The collector had therefore applied the correct provisions of the law (see paras 5–7, 11, 14).

(2) The collector as a public authority who is entrusted to perform statutory duties could have informed the appellant of its reliance on s 16 of the Act and thus avoided the filing of this appeal. In any event, the Act is a piece of legislation that should be read as a whole, particularly when the charging provision in s 4 of the Act stipulated that it should be read subject to the Act or exemptions in the Act. Thus it would be wrong to deny the collector from relying on s 16 of the Act just because it had not informed the appellant of the same. However, taking into consideration the fact that the appellant was not given notice of the collector's reliance on s 16 of the Act there was no order as to costs (see paras 13, 15).

[Bahasa Malaysia summary

Malayan Sugar Manufacturing Co Bhd ('Malayan Sugar') meluluskan resolusi pengarah untuk membayar kepada PPB Group Bhd ('perayu'), sebagai pemegang sahamnya, 'dividend in specie' dengan memindahkan kepada perayu dua belas bidang tanah pegangan kekal ('pindah milik tersebut'). Memorandum pindah milik ('memorandum') yang menunjukkan pindahan tersebut diserahkan kepada pemugut duti setem ('pemungut'). Responden menganggap setiap pindah milik sebagai pelupusan secara sukarela inter vivos dan mengenakan bayaran duti ad valorem sejumlah RM1,277,890 berikutan item 32(a) Jadual Pertama Akta Setem 1949 ('Akta'). Perayu membuat bantahan kepada pengenaan setem duti tetapi pemungut menolaknya dan maka rayuan ini. Ia adalah kes perayu bahawa duti setem yang dikenakan ke atas memorandum sepatutnya adalah jumlah kecil sebanyak RM10 sahaja kerana pindah milik yang dipersoalkan bukan untuk balasan wang dan tidak terangkum di bawah item 32(a) Jadual Pertama Akta. Responden berhujah bahawa walaupun pindah milik tersebut adalah tanpa balasan wang, ia menarik pengenaan pembayaran setem ad valorem di bawah item 32(a) kerana pindah milik tersebut adalah pelupusan secara sukarela inter vivos di bawah s 16 Akta. Perayu juga berhujah bahawa di dalam kesemua surat menyurat di antara perayu dan responden atas isu ini sebelum pemfailan rayuan ini, responden tidak pernah memberitahunya bahawa penggantungan diletakkan ke atas s 16 Akta. Dalam membalas hujahan ini responden berhujah bahawa ia tidak bertanggungjawab untuk mendedahkan peruntukan yang ia guna dalam mencapai keputusannya kepada perayu. Isu utama untuk penentuan dalam

JOBNAME: No Job Name PAGE: 3 SESS: 1 OUTPUT: Tue Oct 4 13:00:41 2011
//caseml/case/mlj/02_-_PPB_Group_Bhd_185589_126936_01

rayuan ini adalah sama ada pemungut telah mengguna pakai peruntukan undang-undang yang betul dalam mengenakan duti setem ad valorem stamp.

Diputuskan, menolak rayuan:

(1) Seksyen 16(1) Akta, yang mana mengikut sejarah mencontoh English Finance Act 1910, membenarkan pemungut untuk mengenakan duti setem atas apa-apa pemindahhakkan atau pindahan yang beroperasi sebagai pelupusan secara sukarela inter vivos dengan duti setem sedemikian seperti ia adalah pemindahhakkan atau pindahan atas jualan. Dalam kes ini memandangkan memorandum pindah milik oleh Malayan Sugar kepada perayu adalah pelupusan secara sukarela inter vivos dalam skop s 16 Akta, duti yang dikenakan adalah seperti apa yang dikenakan atas jualan dan oleh itu item 32(a) Jadual Pertama Akta beraplikasi. Pemungut oleh itu menggunakan peruntukan undang-undang yang betul (lihat perenggan 5–7, 11 & 14).

(2) Pemungut sebagai pihak berkuasa adalah diberikan amanah untuk melakukan duti-duti statutori boleh memberitahu perayu mengenai pengantungannya ke atas s 16 Akta dan oleh itu boleh mengelak daripada memfailkan rayuan ini. Walau bagaimanapun, Akta adalah satu perundangan yang patut dibaca secara keseluruhan, terutamanya apabila peruntukan mengenakan bayaran dalam s 4 Akta menetapkan bahawa ia patut dibaca tertakluk kepada Akta atau pengecualian-pengecualian dalam Akta. Oleh itu adalah salah untuk menafikan pemungut daripada bergantung ke atas s 16 Akta hanya kerana ia tidak memberitahu perayu mengenainya. Walau bagaimanapun, mengambilkira fakta bahawa perayu tidak diberikan notis mengenai pergantungan pemungut ke atas s 16 Akta tidak terdapat perintah kepada kos (lihat perenggan 13 & 15).]

Notes

For cases on revenue law in general, see 10 *Mallal's Digest* (4th Ed, 2011 Reissue) paras 2249–2868.

Cases referred to

ABC v The Comptroller of Income Tax Singapore [1956] MLJ 162 (refd)

Associated British Engineering Limited v Commissioner of inland Revenue [1940] 1 KB 15 (refd)

Lap Shun Textiles Industrial Co Ltd v Collector of Stamp Revenue [1976] 1 All ER 833, PC (refd)

Lim Teck Lee v Commissioner of Stamps [1956] MLJ 135, CA (refd)

Pemungut Duti Setem v Basf Services (Malaysia) Sdn Bhd [2009] 5 MLJ 348; [2010] 4 CLJ 556, CA (refd)

Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd [2009] 5 MLJ 770; [2010] 3 CLJ 310, CA (refd)

Stanyforth & Anor v Comissioners of Inland Revenue [1930] AC 339, HL (refd)

JOBNAME: No Job Name PAGE: 4 SESS: 1 OUTPUT: Tue Oct 4 13:00:41 2011
//caseml/case/mlj/02_-_PPB_Group_Bhd_185589_126936_01

Wesminister Property Group, In re [1984] 1 WLR 1117 (refd)

Legislation referred to

Stamp Act 1949 ss 4, 16, 16(1), (3), 4(1), 38(A)(1), 39, Schedule 1 item 32(a)

Philip Koh (Abigail Lim with him) (Mah Kamariah & Philip Koh) for the appellant.

Shafini Abdul Samad (Legal Officer, Inland Revenue Department) for the respondent.

Rohana Yusuf J:

[1] This was an appeal by the appellant under s 39 of the Stamp Act 1949. The appellant is appealing against the decision of the collector of stamp duties, seeking for a declaration that the assessment and adjudication of stamp duties in respect of a number of memorandum of transfers of the properties listed in this appeal are erroneous, excessive and not in accordance with the Stamp Act 1949.

BACKGROUND FACTS

[2] The appellant is a shareholder of Malayan Sugar Manufacturing Co Bhd ('Malayan Sugar'). Pursuant to a directors' resolution in exh MTR3 passed with approval of its shareholders it was resolved that the Malayan Sugar to pay dividend in specie by transferring 12 pieces of freehold land to the appellant. The memorandum of the said transfers was submitted to the collector of stamp duties for adjudication of stamp duties payable. The collector imposed ad volarem duty pursuant to item 32(a) of the First Schedule of the Stamp Act. Accordingly notice of assessment was issued as exhibited in exh 4 of the case stated imposing a total of RM1,277,890. Dissatisfied, the appellant lodged its objection under s 38(A)(1) of the Act but was rejected by the collector and hence this appeal.

[3] The appellant contended that a nominal stamp duty of RM10, only should be imposed on the memorandum of transfer because the nature of dividend in specie is not a transfer by way of sale. The transfers are not for money consideration and do not fall within the word 'instrument' under item 32(a) of the First Schedule to the Act.

[4] For the respondent it was contended that the said transfers though without monetary consideration attracted ad volarem stamping under item 32(a) because it is a voluntary disposition inter vivos under s 16 of the Stamp

JOBNAME: No Job Name PAGE: 5 SESS: 1 OUTPUT: Tue Oct 4 13:00:41 2011
//caseml/case/mlj/02_-_PPB_Group_Bhd_185589_126936_01

Act.

WHETHER S 16 APPLIES

[5] Instrument chargeable with duty are stipulated under s 4 of the Stamp Act. Section 4(1) provides that:

> subject to this Act and subject to the exemptions contained in this Act and in any written law for the time being in force, the several instruments specified in the First Schedule shall, from and after the commencement of this Act, be chargeable with the several duties specified in such schedule.

Thus s 4 refers to item 32(a) which includes instrument of transfer relating to sale of any property. The appellant argued that the instruments involved in the present case are not memorandum of transfer based on sale. 'Sale' according to the appellant must refer to exchange of property for cash and not for another property as defined in *Re Wesminister Property Group* [1984] 1 WLR 1117.

[6] Parties are not in dispute that 'sale in its ordinary meaning must have all the elements of sale and with proper consideration. However, in my view, besides 'sale' s 16(1) allows a charging on any conveyance or transfer operating as a voluntary disposition inter vivos with the like stamp duty as if it were a conveyance or transfer on sale.

[7] Looking at s 16, I agree with the contention of the respondent that payment in specie is a voluntary disposition inter vivos as contemplated under s 16(1) and (3) of the Act. In my view s 16(3) has been worded very widely to cover a transfer based on payment in specie. This is because s 16 provides that where any conveyance or transfer is not a disposition made in favour of a purchaser or incumbrancer or other person in good faith and for valuable consideration, it shall be deemed to be a conveyance or transfer operating as a voluntary disposition inter vivos. It is obvious that the transfer in the present case is not made in favour of purchaser or incumbrancer and other person is good faith. Thus using this provision the transfer in this case is disposition inter vivos.

[8] Section 16 is historically modelled on the English statute, the Finance Act 1910, where s 74(1) provides as 'any conveyance or transfer operating inter vivos shall be chargeable with the like stamp duty as if it were a conveyance or transfer on sale'. Section 74(5) states that 'any conveyance or transfer (not being a disposition made in favour of a purchaser or incumbrancer or other person in good faith and for valuable consideration), shall be deemed to be conveyance or transfer operating as a voluntary disposition inter vivos'.

JOBNAME: No Job Name PAGE: 6 SESS: 1 OUTPUT: Tue Oct 4 13:00:41 2011
//caseml/case/mlj/02_-_PPB_Group_Bhd_185589_126936_01

[9] Section 16 is similar and in pari materia with the English statute on this matter as seen in the English case of *Associated British Engineering Limited v Commissioner of Inland Revenue* [1940] 1 KB 15. In that case the issue arose on what is the stamp duty charged on the instrument of transfer of shares to the company's shareholder pursuant to a resolution declaring distribution of capital bonus partly in specie and partly in cash. The Commissioner treated each transfer as a voluntary disposition inter vivos and charged ad valorem duty under s 74. It was held by Lawrence J that the disposition was a voluntary disposition and upheld the Commissioner's decision on the ad volarem stamping.

[10] In determining the value of the transaction, the House of Lords in *Stanyforth & Anor v Comissioners of Inland Revenue* [1930] AC 339 based the value for the amount of consideration for a sale had the deed been a conveyance or transfer on sale. Thus, eventhough there was no monetary consideration ad volarem stamping will be imposed based on such computation.

[11] Learned counsel for the appellant argued that s 16 cannot expand the meaning of 'sale' in item 32(a) but only allows equating the rate of stamping which ought to be charged on a memorandum to a voluntary disposition inter vivos. Learned counsel further contended that s 16 does not equate voluntary disposition inter vivos to memorandum of transfer in a sale. He further submitted that in the Privy Council decision in *Lap Shun Textiles Industrial Co Ltd v Collector of Stamp Revenue* [1976] 1 All ER 833 an appeal from Hong Kong Supreme Court, the collector of stamp revenue reassessed the stamp duty and invoked a different section under s 27(4) of the Stamp Duty Ordinance. According to learned counsel the relevant section in the Ordinance is in pari materia with our Act. This shows that a sale under item 32(a) or voluntary disposition inter vivos under s 16 can only be either a sale or voluntary disposition and cannot be both. Section 16 therefore according to learned counsel is aimed at instrument for disposition without valuable consideration.

[12] In my view there is no issue of expanding the definition of sale here. What happens in fact is that the respondent in determining the stamp duty under s 4 was reading this clause subject to all the provisions of the Act including s 16. In applying s 16 the respondent found that the transaction involved falls under s 16 because it is a voluntary disposition inter vivos. Hence these transfers are caught by s 16(3). This is because s 16(3) says disposition made in favour of a purchaser or incumbrancer in good faith and with valuable consideration is deemed to be voluntary disposition inter vivos.

PLEADING

[13] Learned counsel for the appellant also raised issue on the case stated

JOBNAME: No Job Name PAGE: 7 SESS: 1 OUTPUT: Tue Oct 4 13:00:41 2011
//caseml/case/mlj/02_-_PPB_Group_Bhd_185589_126936_01

drafted by respondent. He contended that, the issue raised is whether the instrument in question falls under conveyance or sale under item 32(a), and never been on whether the instrument falls under s 16 citing the Appeal Court's decision in *Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd* [2009] 5 MLJ 770; [2010] 3 CLJ 310 learned counsel argued that the case stated is a form of pleading and unfairness will be created if parties do not confine to its pleaded case. Thus he contended it would not be fair to allow the respondent to rely on s 16. The appellant further submitted that in all the correspondences between the appellant and respondent on this issue prior to the filing of the appeal, the respondent had never informed that reliance is placed on s 16 of the Act. In countering the argument the respondent contended that the collector has no duty to notify the duty payer on the provision for the assessment. He quoted the decision of *ABC v The Comptroller of Income Tax Singapore* [1956] MLJ 162 to support this contention. In this case it was held that there is no requirement for the comptroller or any duty is imposed upon him to specify or give particulars of the sources of taxpayer's income before a liability to tax is disclosed. Hence the respondent contended there is no duty to divulge to the appellant under which provision of the la it relies in coming to its decision.

[14] I have given my due consideration on this point. In my view, the stamp collector as public authority who is entrusted to perform statutory duties could have informed the appellant of the specified provision and avoided the filing of this appeal, throughout their correspondences. Even though there is no requirement under the law to inform when letters of communication were exchanged then it would have been useful if the appellant had been made aware of the basis of charging. It was for this reason that at the date of submission, when this issue was brought to my attention I allowed time for the appellant to further submit on the ambit of s 16. In any event, the Stamp Act 1949 is a piece of legislation that should be read as a whole. Particularly when the charging provision in s 4 of the Act stipulates that it must be read subject to the Act or exemptions in the Act itself or any other written law in referring to the First Schedule where item 32 sits. Thus it would be wrong to deny the respondent from relying on this provision of the law.

ENDORSEMENT ON THE MEMORANDUM

[15] Learned counsel for the appellant contended that the respondent ought to have put the accurate endorsement on the memorandum. It should be endorsed as 'charged under s 16' and not 'item 32a'. In my view it is wrong to suggest that the endorsement on the transfer forms in exh 7 should read as 'charged under s 16' and not 'item 32(a)' as endorsed. Such argument is ill conceived because s 16 is a mere explanatory provision that, a voluntary disposition inter vivos shall be charged like as though it is a conveyance or transfer on sale. The duty to be imposed is as per 'item 32(a)' of the First

JOBNAME: No Job Name PAGE: 8 SESS: 1 OUTPUT: Tue Oct 4 13:00:41 2011
//caseml/case/mlj/02_-_PPB_Group_Bhd_185589_126936_01

Schedule. Thus it is only right that 'item 32(a)' is endorsed on the memorandum of transfer because it is under that 'item 32(a)' that stamp duty ad voleram is imposed. This goes in tandem with the principle of stamp duty that stamp duty is charged upon an instrument not upon transaction as decided in *Lim Teck Lee v The Commissioner of Stamps* [1956] MLJ 135. The Court of Appeal in *Pemungut Duti Setem v Basf Services (Malaysia) Sdn Bhd* [2009] 5 MLJ 348; [2010] 4 CLJ 556 reiterated this principle. In the present case since the memorandum of transfer by Malayan Sugar to the appellant is a voluntary disposition inter vivos within the scope of s 16 of the Act, the duty chargeable is like what is charged on a sale and thereby 'item 32(a)' of the First Schedule to the Act, becomes applicable. The respondent has therefore applied the correct provisions of the law in imposing the ad voleram stamping.

[16] Based on the above reasons, the appeal of the appellant has to be dismissed. Taken into consideration the issue raised by the appellant that, it was not made aware of the reliance placed by the respondent on s 16, otherwise this appeal have not been made, I made no order as to costs.

Appeal dismissed.

Reported by Kohila Nesan